

(f) Personal services contracts for the services of individual experts or consultants are limited by the Classification Act. In addition, the Office of Personnel Management has established requirements which apply in acquiring the personal services of experts or consultants in this manner (e.g., benefits, taxes, conflicts of interest). Therefore, the contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

37.105 Competition in service contracting.

(a) Unless otherwise provided by statute, contracts for services shall be awarded through sealed bidding whenever the conditions in 6.401(a) are met (except see 6.401(b)).

(b) The provisions of statute and part 6 of this regulation requiring competition apply fully to service contracts. The method of contracting used to provide for competition may vary with the type of service being acquired and may not necessarily be limited to price competition.

[50 FR 1744, Jan. 11, 1985, and 50 FR 52429, Dec. 23, 1985]

37.106 Funding and term of service contracts.

(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law (see paragraph (b) of this section for certain service contracts, 32.703-2 for contracts conditioned upon availability of funds, and 32.703-3 for contracts crossing fiscal years).

(b) 41 U.S.C. 253I, as amended by Section 1073 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355), authorizes the head of any executive agency except the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration (41 U.S.C. 252(a)(1)), to enter into a basic contract, options, or orders under that contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the basic contract, options or orders under that contract

does not exceed one year each. Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority (see 32.703-3(b)). Consult agency supplements for similar authorities that may exist for the Department of Defense, United States Coast Guard, or the National Aeronautics and Space Administration.

[60 FR 37778, July 21, 1995]

37.107 Service Contract Act of 1965.

The Service Contract Act of 1965 (41 U.S.C. 351-357) (the Act) provides for minimum wages and fringe benefits as well as other conditions of work under certain types of service contracts (see subpart 22.10). Whether or not the Act applies to a specific service contract will be determined by the definitions and exceptions given in the Act, or implementing regulations.

37.108 Small business Certificate of Competency.

In those service contracts for which the Government requires the highest competence obtainable, as evidenced in a solicitation by a request for a technical/management proposal and a resultant technical evaluation and source selection, the small business Certificate of Competency procedures may not apply (see subpart 19.6).

37.109 Services of quasi-military armed forces.

Contracts with *Pinkerton Detective Agencies or similar organizations* are prohibited by 5 U.S.C. 3108. This prohibition applies only to contracts with organizations that offer quasi-military armed forces for hire, or with their employees, regardless of the contract's character. An organization providing guard or protective services does not thereby become a *quasi-military armed force*, even though the guards are armed or the organization provides general investigative or detective services. (See 57 Comp. Gen. 524).

37.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.237-1, Site Visit, in solicitations for services to be

performed on Government installations, unless the solicitation is for construction.

(b) The contracting officer shall insert the clause at 52.237-2, Protection of Government Buildings, Equipment, and Vegetation, in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated.

(c) The contracting officer may insert the clause at 52.237-3, Continuity of Services, in solicitations and contracts for services, when—

(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

(d) See 9.508 regarding the use of an appropriate provision and clause concerning the subject of conflict-of-interest, which may at times be significant in solicitations and contracts for services.

(e) The contracting officer shall also insert in solicitations and contracts for services the provisions and clauses prescribed elsewhere in the FAR, as appropriate for each acquisition, depending on the conditions that are applicable.

[48 FR 42365, Sept. 19, 1983, as amended at 55 FR 52795, Dec. 21, 1990; 57 FR 60584, Dec. 21, 1992]

37.111 Extension of services.

Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. In order to avoid negotiation of short extensions to existing contracts, the contracting officer may include an option clause (see 17.208(f)) in solicitations and contracts which will enable the Government to require continued performance of any services

within the limits and at the rates specified in the contract. However, these rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

[54 FR 29282, July 11, 1989]

37.112 Government use of private sector temporaries.

Contracting officers may enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. Services furnished by temporary help firms shall not be regarded or treated as personal services. These services shall not be used in lieu of regular recruitment under civil service laws or to displace a Federal employee. Acquisition of these services shall comply with the authority, criteria, and conditions of 5 CFR part 300, subpart E, Use of Private Sector Temporaries, and agency procedures.

[56 FR 55380, Oct. 25, 1991]

37.113 Severance payments to foreign nationals.

37.113-1 Waiver of cost allowability limitations.

(a) The head of any agency, or designee, may waive the 31.205-6(g)(3) cost allowability limitations on severance payments to foreign nationals for contracts that—

(1) Provide significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States; and

(2) Will be performed in whole or in part outside the United States.

(b) Waivers can be granted only before contract award.

(c) Waivers cannot be granted for—

(1) Military banking contracts, which are covered by 10 U.S.C. 2324(e)(2); or

(2) Severance payments made by a contractor to a foreign national employed by the contractor under a DOD service contract in the Republic of the Philippines, if the discontinuation of the foreign national is the result of the